

Assembly Bill No. 178

Passed the Assembly September 2, 1999

Chief Clerk of the Assembly

Passed the Senate August 26, 1999

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 1999, at _____ o'clock ____M.

Private Secretary of the Governor

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CHAPTER _____

An act to add and repeal Section 53084 of the Government Code, and to add and repeal Section 33426.7 of the Health and Safety Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 178, Torlakson. Development: financial assistance: relocation.

Existing law permits a redevelopment agency, under specified circumstances, to pay all or part of the costs of land, or the installation and construction of any structure or other improvement that is publicly owned within or without a project area. Existing law prohibits a redevelopment agency from providing any form of direct assistance to an automobile dealership on a parcel not previously developed for urban use, or a development on a parcel of 5 acres or more not previously developed for urban use that would generate sales and use taxes, except as specified.

This bill, until January 1, 2005, would further prohibit a redevelopment agency, and would prohibit a city or county, from providing any form of financial assistance to an automobile dealership or big box retailer, or a business entity that sells or leases land to an automobile dealership or big box retailer, that is relocating from the territorial jurisdiction of one community, or city or county, to the territorial jurisdiction of another community, or city or county, but within the same market area, unless the receiving community, or city or county, offers the other community, or city or county, a contract that apportions sales tax generated by the dealership or retailer between the 2 communities, or cities or counties, as specified, and the agency, or city or county, holds a public hearing and adopts a resolution making specified findings relating to whether or not a contract has been approved.

This bill would require the California Research Bureau to report to the Governor and the Legislature on or



before January 1, 2004, regarding the implementation of its provisions.

The people of the State of California do enact as follows:

SECTION 1. (a) The Legislature finds and declares that the provision of financial assistance by local agencies to automobile dealerships and big box retailers that seek to obtain public funds from local agencies as subsidies for their relocation, results in the loss of public funds available for public purposes, impedes the implementation of good planning, encourages unfair competition between local agencies, and does not result in a public benefit to the people of the state.

(b) The Legislature further finds and declares that limiting this competition for sales tax revenues is an issue of statewide concern and therefore it is necessary to apply the provisions of this act to all cities and counties in the state.

SEC. 2. Section 53084 is added to the Government Code, to read:

53084. (a) Notwithstanding any other provision of this part, a local agency shall not provide any form of financial assistance to an automobile dealership or big box retailer, or a business entity that sells or leases land to an automobile dealership or big box retailer, that is relocating from the territorial jurisdiction of one local agency to the territorial jurisdiction of another local agency but within the same market area, unless the legislative body of the local agency to which the relocation will occur offers the contract to the local agency from which the relocation is occurring pursuant to this section.

(b) If the automobile dealership or big box retailer is relocating within the same county, including both incorporated and unincorporated territory, or to an adjacent county or a city within an adjacent county, the local agency proposing to offer financial assistance shall prepare a report that describes the market area for the automobile dealership or big box retailer that is

relocating. The report shall include the information required to be contained in the resolution pursuant to subdivision (e). The report shall refer to and cite the independent literature, trade publications, and recognized and established business policies and practices describing the market area for the automobile dealership or big box retailer that is relocating. The report shall conclude that the relocation is occurring either within the same market area or outside the same market area. The report shall be available to the public not later than 45 days prior to the date of the public hearing required by subdivision (d). In addition, the notice of the public hearing and the report shall be mailed to the local agency from which the relocation is occurring.

(c) (1) If the report prepared pursuant to subdivision (b) concludes that the automobile dealership or big box retailer is relocating within the same market area, at least 45 days prior to the public hearing required pursuant to subdivision (d), the agency shall notify the local agency from which the relocation is occurring of its intent to give financial assistance and shall send to that local agency a contract that has been approved by a two-thirds vote of the legislative body of the local agency and that apportions the sales tax generated from the automobile dealership or big box retailer after the relocation between the two local agencies in the following manner:

(A) The annual amount of assistance shall be subtracted from the annual sales tax.

(B) The difference shall be divided equally between the two local agencies for the first 10 fiscal years following the relocation. However, in no event shall the local agency from which the relocation is occurring receive more sales tax than it received from the automobile dealership or big box retailer in the fiscal year prior to the relocation.

(C) After the first 10 fiscal years following the relocation, the contract shall terminate and the apportionment shall end unless the contract is extended by both local agencies.



(2) The local agency from which the relocation is occurring shall have 30 days after receipt of the contract to approve the contract by enacting a resolution or ordinance approved by a two-thirds vote of its legislative body.

(d) Prior to a local agency giving any financial assistance to an automobile dealership or big box retailer that is relocating, the agency shall hold a public hearing. Notice of the time and place of the public hearing shall be published in a newspaper of general circulation in the local agency at least once per week for at least three successive weeks, as specified in Section 6063 of the Government Code, prior to the hearing.

(e) The resolution approving financial assistance shall do all of the following:

(1) Identify the present name and, if different, the former name of the relocating automobile dealership or big box retailer.

(2) Identify the address, including the local agency, from which the automobile dealership or big box retailer has moved or will move.

(3) Identify the address, including the local agency, to which the automobile dealership or big box retailer will move.

(4) Contain one of the following findings:

(A) That the automobile dealership or big box retailer is not relocating within the same market area.

(B) That the automobile dealership or big box retailer is relocating within the same market area but that a contract containing the terms specified in subdivision (c) has been approved by the local agency's legislative body, and offered to the local agency from which the relocation has occurred, which has approved the agreement, entered into another agreement acceptable to both local agencies, or has not accepted the proposed contract within the 30-day period.

These findings shall be final and conclusive as to all persons except for the automobile dealership or big box retailer that is the subject of the findings and the



community from which the relocation has occurred, all of which may bring an action to challenge these findings.

(f) As used in this section, the following terms have the following meaning:

(1) “Big box retailer” means a store of greater than 75,000 square feet of gross buildable area that will generate sales or use tax pursuant to Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code.

(2) “Local agency” means a chartered or general law city, a chartered or general law county, or a city and county. “Local agency” does not include a redevelopment agency that is subject to Section 33426.7 of the Health and Safety Code.

(3) “Financial assistance” includes, but is not limited to, any of the following:

(A) Any appropriation of public funds, including loans, grants, or subsidies or the payment for or construction of parking improvements.

(B) Any tax incentive, including tax exemptions, rebates, reductions, or moratoria of a tax, including any rebate or payment based upon the amount of sales tax generated from the automobile dealership or big box retailer.

(C) The sale or lease of real property at a cost that is less than fair market value.

(D) Payment for, forgiveness of, or reduction of fees.

(4) (A) “Market area” means a geographical area that is described in independent and recognized commercial trade literature, recognized and established business or manufacturing policies or practices, or publications of recognized independent research organizations as being an area that is large enough to support the location of the specific automobile dealership or the specific big box retailer that is relocating.

(B) With respect to an automobile dealership, a “market area” shall not extend further than 40 miles, as measured by the most reasonable route on roads between two points, starting from the location from which the



automobile dealership is relocating and ending at the location to which the automobile dealership is relocating.

(C) With respect to a big box retailer, a “market area” shall not extend further than 25 miles, as measured by the most reasonable route on roads between two points, starting from the location from which the big box retailer is relocating and ending at the location to which the big box retailer is relocating.

(5) “Relocating” means the closing of an automobile dealership or big box retailer in one location and the opening of an automobile dealership or big box retailer in another location within a 365-day period when a person or business entity has an ownership interest in both the automobile dealership or big box retailer that has closed or will close and the one that is opening. “Relocating” does not mean and shall not include the closing of an automobile dealership or big box retailer because the automobile dealership or big box retailer has been or will be acquired or has been or will be closed as a result of the use of eminent domain.

(g) This section does not apply to local agency assistance in the construction of public improvements that serve all or a portion of the jurisdiction of the local agency and that are not required to be constructed as a condition of approval of the automobile dealership or big box retailer. This section also does not prohibit assistance in the construction of public improvements that are being constructed for a development other than the automobile dealership or big box retailer.

(h) Notwithstanding Section 7550.5, on or before January 1, 2004, the California Research Bureau shall report to the Legislature and the Governor regarding the implementation of this section. The report shall identify the reports prepared pursuant to subdivision (b), the contracts offered pursuant to subdivision (c), and the resolutions approved pursuant to subdivision (e). The report may include any additional information that the bureau finds relevant. The report may also include recommendations for legislative action, including, but



not limited to, amending, or extending the repeal date of, this section.

(i) This section shall remain in effect only until January 1, 2005, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2005, deletes or extends that date.

SEC. 3. Section 33426.7 is added to the Health and Safety Code, to read:

33426.7. (a) Notwithstanding any other provision of this part, a redevelopment agency shall not provide any form of financial assistance to an automobile dealership or big box retailer, or a business entity that sells or leases land to an automobile dealership or big box retailer, that is relocating from the territorial jurisdiction of the community to the territorial jurisdiction of another community but within the same market area, unless the legislative body of the community to which the relocation will occur offers the contract to the community from which the relocation is occurring pursuant to this section.

(b) If the automobile dealership or big box retailer is relocating within the same county, including both incorporated and unincorporated territory, or to an adjacent county or a city within an adjacent county, the redevelopment agency proposing to offer financial assistance shall prepare a report that describes the market area for the automobile dealership or big box retailer that is relocating. The report shall include the information required to be contained in the resolution pursuant to subdivision (e). The report shall refer to and cite the independent literature, trade publications, and recognized and established business policies and practices describing the market area for the automobile dealership or big box retailer that is relocating. The report shall conclude that the relocation is occurring either within the same market area or outside the same market area. The report shall be available to the public not later than 45 days prior to the date of the public hearing required by subdivision (d). In addition, the notice of the public hearing and the report shall be mailed to the community from which the relocation is occurring.



(c) (1) If the report prepared pursuant to subdivision (b) concludes that the automobile dealership or big box retailer is relocating within the same market area, at least 45 days prior to the public hearing required pursuant to subdivision (d), the agency shall notify the community from which the relocation is occurring of its intent to give financial assistance and shall send to that community a contract that has been approved by a two-thirds vote of the legislative body of the agency and that apportions the sales tax generated from the automobile dealership or big box retailer after the relocation between the two communities in the following manner:

(A) The annual amount of assistance shall be subtracted from the annual sales tax.

(B) The difference shall be divided equally between the two communities for the first 10 fiscal years following the relocation. However, in no event shall the community from which the relocation is occurring receive more sales tax than it received from the automobile dealership or big box retailer in the fiscal year prior to the relocation.

(C) After the first 10 fiscal years following the relocation, the contract shall terminate and the apportionment shall end unless the contract is extended by both communities.

(2) The community from which the relocation is occurring shall have 30 days after receipt of the contract to approve the contract by enacting a resolution or ordinance approved by a two-thirds vote of its legislative body.

(d) Prior to a redevelopment agency giving any financial assistance to an automobile dealership or big box retailer that is relocating, the agency shall hold a public hearing. Notice of the time and place of the public hearing shall be published in a newspaper of general circulation in the community at least once per week for at least three successive weeks, as specified in Section 6063 of the Government Code, prior to the hearing.

(e) The resolution approving financial assistance shall do all of the following:

(1) Identify the present name and, if different, the former name of the relocating automobile dealership or big box retailer.

(2) Identify the address, including the city or county, from which the automobile dealership or big box retailer has moved or will move.

(3) Identify the address, including the city or county, to which the automobile dealership or big box retailer will move.

(4) Contain one of the following findings:

(A) That the automobile dealership or big box retailer is not relocating within the same market area.

(B) That the automobile dealership or big box retailer is relocating within the same market area but that a contract containing the terms specified in subdivision (c) has been approved by the agency's legislative body, and offered to the community from which the relocation has occurred, which has approved the agreement, entered into another agreement acceptable to both communities, or has not accepted the proposed contract within the 30-day period.

These findings shall be final and conclusive as to all persons except for the automobile dealership or big box retailer that is the subject of the findings and the community from which the relocation has occurred, all of which may bring an action to challenge these findings.

(f) As used in this section, the following terms have the following meaning:

(1) "Big box retailer" means a store of greater than 75,000 square feet of gross buildable area that will generate sales or use tax pursuant to Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code.

(2) "Community" and "territorial jurisdiction" have the meanings specified in Sections 33002 and 33120, respectively.

(3) "Financial assistance" includes, but is not limited to, any of the following:



(A) Any appropriation of public funds, including loans, grants, or subsidies or the payment for or construction of parking improvements.

(B) Any tax incentive, including tax exemptions, rebates, reductions, or moratoria of a tax, including any rebate or payment based upon the amount of sales tax generated from the automobile dealership or big box retailer.

(C) The sale or lease of real property at a cost that is less than fair market value.

(D) Payment for, forgiveness of, or reduction of fees.

(4) (A) “Market area” means a geographical area that is described in independent and recognized commercial trade literature, recognized and established business or manufacturing policies or practices, or publications of recognized independent research organizations as being an area that is large enough to support the location of the specific automobile dealership or the specific big box retailer that is relocating.

(B) With respect to an automobile dealership, a “market area” shall not extend further than 40 miles, as measured by the most reasonable route on roads between two points, starting from the location from which the automobile dealership is relocating and ending at the location to which the automobile dealership is relocating.

(C) With respect to a big box retailer, a “market area” shall not extend further than 25 miles, as measured by the most reasonable route on roads between two points, starting from the location from which the big box retailer is relocating and ending at the location to which the big box retailer is relocating.

(5) “Relocating” means the closing of an automobile dealership or big box retailer in one location and the opening of an automobile dealership or big box retailer in another location within a 365-day period when a person or business entity has an ownership interest in both the automobile dealership or big box retailer that has closed or will close and the one that is opening. “Relocating” does not mean and shall not include the closing of an automobile dealership or big box retailer because the



automobile dealership or big box retailer has been or will be acquired or has been or will be closed as a result of the use of eminent domain.

(g) This section does not apply to agency assistance in the construction of public improvements that serve all or a portion of a project area and that are not required to be constructed as a condition of approval of the automobile dealership or big box retailer. This section also does not prohibit assistance in the construction of public improvements that are being constructed for a development other than the automobile dealership or big box retailer.

(h) Notwithstanding Section 7550.5 of the Government Code, on or before January 1, 2004, the California Research Bureau shall report to the Legislature and the Governor regarding the implementation of this section. The report shall identify the reports prepared pursuant to subdivision (b), the contracts offered pursuant to subdivision (c), and the resolutions approved pursuant to subdivision (e). The report may include any additional information that the bureau finds relevant. The report may also include recommendations for legislative action, including, but not limited to, amending, or extending the repeal date of, this section.

(i) This section shall remain in effect only until January 1, 2005, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2005, deletes or extends that date.



Approved _____, 1999

Governor

